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**Rail Fares and Ticketing Review: Initial consultation**

1. Thank you for the opportunity to comment upon *Rail Fares and Ticketing Review: Initial consultation* ('the consultation'). We address the policy questions in your consultation in the annex to this letter.

2. Ultimately, the railway exists to benefit the people who use it. There are constraints, however, not least money. But delivering a service that leads to increasing passenger satisfaction and more use of rail means a sharper focus on what passengers want. Passengers tell us they want better value for money.

3. We are committed to improving the credibility and effectiveness of passenger protection in the mainline railway through means including using our powers and influence as a designated enforcer of consumer law under Part 8 of the Enterprise Act 2002. A sharper focus on customers forms a key element of our business plan for 2012-2013. In June 2012 we published a report, *Fares and ticketing – information and complexity*, setting out the findings of our research into passengers' experiences of choosing and buying rail tickets. We are now engaging constructively with the industry as it implements its planned commitments in response to the findings of our study.

4. The key points from our response are, under each of the headings in your list of consultation questions:

- *Principles of fares and ticketing regulation* – We agree that your stated objectives for fares regulation are valid and important within the scope of a review that is focused on improving a small number of aspects of the *status quo*. We do, however, suggest a number of further objectives that would be relevant, over the longer term, in helping fares regulation to become a sharper policy tool;
- *Smart ticketing and season tickets* – The consultation's statement of the relevant issues is quite comprehensive. New technology has the potential to deliver significant benefits for passengers. Key issues include the need to ensure that all potential technologies, rather than smartcards only, are considered, and take into account the affordability of fares and schemes as a whole, together with the needs of all passengers, particularly the elderly and vulnerable.



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- *Using fares to achieve more efficient use of rail capacity* – We agree with the general principle that fares could have the potential to help the railway operate more efficiently by encouraging some passengers to change their travel patterns. Such change would be consistent with the way in which access to the rail network is charged. The key issue is to ensure that any new fares aimed at spreading peak demand would not unacceptably compromise other key objectives of fares regulation, notably protecting passengers against market power, ensuring fairness, and taking account of affordability. It will be important to test any proposals for changes in the level and structure of fares against their implications for other aspects of government policy, such as social inclusion and access to employment. The potential conflict between these policy goals is clearly an obstacle to change but this is not a reason not to consider it. At a minimum we believe there is value in considering and exposing the relevant trade-offs to ensure that the public debate and policy choices are well informed. It is also important to consider the full range of tools that could be used to promote efficient use of rail capacity beyond fares, such as improved information to passengers about their journey choices.
- *Fares and ticketing complexities* – ORR research published earlier this year, highlighted the harm to passengers that can arise when there are issues with the quality of information that is available to them. Fares data should be an important strand of the industry’s movement towards the wider availability of information, and its delivery to passengers in the form most useful to them.
- *Buying tickets* – Our response makes some observations on the ticket office debate based on our work with passengers. Any policy that reduced ticket office opening hours should seek, as far as possible, to compensate passengers for the loss of the key benefits of ticket office use. These benefits derive from factors such as the current limitations of ticket vending machines (TVMs) and the advantages of ticket offices for perceptions of security. As you know, we also believe that, subject to safeguards being put in place, Ministers should give more flexibility to train operators to determine how best to serve their customers, being less involved in the detail (as the Command Paper suggests) and using independent regulation to protect customer interests.

5. We recognise that DfT currently wishes to consider incremental changes to the status quo and have written our response accordingly.

6. We would, however, encourage a more open approach when thinking about the longer term future of fares regulation. Such thinking could consider all of the objectives for fares regulation that we suggest in the annex to this letter, and should, in our view, include consideration of the value of independent economic regulation of fares. This could be considered in the context of a longer term direction of travel for the rail industry which would, over time and with appropriate transition arrangements, more closely resemble



other regulated industries, with greater reliance on private sector financing and government intervention better targeted on those market failures which matter most to society. The independent regulation of fares could also have significant advantages from a transparency perspective.

7. Similar considerations attach to ORR having a wider role in retail which would have the added benefit of providing the passenger with a single and powerful body that it will look to for the delivery of a more customer focused industry. We already have significant powers under consumer law (as you mention in your consultation) and have demonstrated effectively how we can step in on behalf of the consumer when things go wrong. Our recent report on ticket complexity is testament to this. The overlap between ORR's role and that of DfT is confusing from the perspective of the passenger and creates uncertainty on the part of the train operators. The transfer of retail to us would provide the opportunity for us to streamline the current system which would have benefits for both passengers and industry.

8. Our full response is appended to this letter, and follows the structure of your consultation document. It follows a discussion with ORR's forum of consumer experts<sup>1</sup>.

9. We have completed a separate online response to your questions 2.7 and 2.8 in our capacity as an employer of around 300, mostly London-based, staff.

10. In recent weeks we have been discussing the possibility of some joint work between ORR and DfT staff on issues around the regulation of long-distance fares. We are committed to helping you on this and other issues as needed.

Yours sincerely

Cathryn Ross

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<sup>1</sup> <http://www.rail-reg.gov.uk/server/show/nav.2505>

## **Annex: ORR response to Fares and Ticketing Review initial consultation**

### *Chapter 1 - Principles of fares and ticketing regulation (objectives)*

1. We agree that Chapter One (of the consultation)'s stated objectives for fares regulation are valid and important. They are, however, focused to some extent on the relatively small number of key issues that the consultation considers in depth. We also think it would be helpful to group objectives by type, recognising the necessarily diverse nature of what fares regulation has to deliver and providing greater clarity on how these fit together.

2. With this in mind we have attempted to sketch out a fuller list of objectives, grouped by type, set out below. We believe that these objectives provide a reasonably holistic view of appropriate aims for fares regulation. We have grouped objectives into:

- Substantive objectives, concerning the motivation for regulating particular types of fare at particular levels, split into:
  - Economic objectives, whereby regulation could be used to mitigate market failures; and
  - Wider public policy objectives, aimed at using regulatory policy for reasons of social policy.
- Procedural objectives, concerning the means by which substantive objectives are pursued.

3. In our view, important substantive economic objectives for fares regulation include the following.

- a) The protection of consumers from high prices that exploit positions of market power.
- b) The sending of price signals that provide the basis for efficient decisions by passengers (which tickets they buy, for what journey and when) and train operators (which tickets to offer, for what journeys and when, flowing through into, for example, their demand for inputs including network capacity, and investment decisions).
- c) The recovery of efficiently incurred costs.

4. Wider substantive 'public policy' objectives include the following.

- a) Fair fares. Fares should be perceived by passengers as providing value for money. This is important for the legitimacy of the sector.

b) Affordable fares.

5. Legitimate procedural objectives include the following.

a) Accountability and transparency:

- Accountability for decisions on fares regulation (what is regulated, at what level and what process is followed) must be clear and transparent.
- Ministers must be able to decide on the amount of public money operators receive and broadly what government gets in return.
- Reasons and evidence underpinning decisions on what fares are regulated and at what level must be clear and transparent.
- Lines of accountability must be clear and transparent (see above).

b) No undue burdens on business and/or administrative cost:

- Fares regulation should not place undue burdens on business or increase administrative costs unless it can be demonstrated that this cost is proportionate to the benefits.
- Fares regulation should facilitate government's retreat from the detail of franchise specification and delivery.

c) Localism - fares regulation should be compatible with a greater local specification of outputs and funding.

6. The current system of fares regulation goes some way towards achieving the economic objectives that we outline at paragraph 3 above. In particular:

- a) Current regulation caps the price of some of the products for which passengers have fewest alternatives to travelling by rail, notably commuter tickets.
- b) Some aspects of the current approach to regulation, notably the control of fares with reference to price 'baskets', enabling flexibility for TOCs in their setting of individual fares, are conducive to price signals that provide the basis for efficient decisions.

7. The relatively simple, broad-brush, regulatory approach applied to date has, however, limited the overall effectiveness of the regime from an economic perspective.

- a) The precise scope of current regulation has not been determined by a detailed analysis of where market power does and does not exist. Rather, it is set by simple rules of thumb established at privatisation<sup>2</sup>. This may lead to both unnecessary

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<sup>2</sup> See, e.g., <http://www.parliament.uk/briefing-papers/SN01904>.

'false positives' in regulation, i.e. the regulation of fares are already constrained by effective competition, creating the potential for distortions, and false negatives.

- b) The levels of individual fares are not the product of any deliberate attempts to reflect demand conditions or costs. Rather, they reflect a series of blanket 'RPI plus' and 'RPI minus' caps that have been applied across franchises since privatisation.
- c) The current system of fares regulation typically provides limited scope for the recovery of investment costs over time, particularly in the case of investments (such as in rolling stock) with lifetimes spanning beyond franchise durations.

8. In relation to the effectiveness of the current system of fares regulation in fulfilling wider public policy objectives (see paragraph 4):

- a) Passengers' perception of value money is mixed. Research by Passenger Focus published in June 2012<sup>3</sup> showed 42% of passengers giving a "satisfied" or "good" rating for value for money, with 37% "dissatisfied" or "poor", and 21% "neither". According to the 2011 Rail Value for Money study "...[benchmarking commissioned for the study] shows that average fares in Great Britain (as measured by revenue per passenger-km) would need to reduce by at least 30% to match those elsewhere in Europe". Any differences between trends in fares and performance measures such as punctuality may be relevant here.
- b) Some aspects of the current system, including the availability of at least one regulated ticket for most origin-destination pairs, and of railcards aimed at groups such as senior and disabled passengers, promote affordability. But we are not aware of any across-the-board consideration of the affordability of fares, for example through an examination of the link between fares and passenger incomes.

9. The current system means that Ministers are able to decide on the amount of public money that operators receive and, broadly, what government gets in return. But, in our view, compared to other regulated industries there is a lack of transparency in terms of both:

- the rationale that underlies both the current approach generally and underlying individual regulatory decisions; and
- the relationship between fares and costs.

10. This lack of transparency flows in part from fares regulation's current status as part of a contract-based model of regulation, where bilateral discussions over franchise contracts play a key role. In other regulated industries (and in the regulation of Network Rail's

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<sup>3</sup> See <http://www.passengerfocus.org.uk/research/publications/national-passenger-survey-spring-2012-main-report>

access charges by ORR) companies' right of appeal over regulatory decisions plays an important role in generating an environment of transparency.

11. The current system of fares regulation contributes to government's involvement in the detail of franchise specification and delivery. We are not aware that it places any undue burdens on business.

#### *Chapter 2 - Smart ticketing and season tickets*

12. The consultation's statement of the relevant issues seems fairly comprehensive.

13. New technology has the potential to deliver significant benefits for passengers. It is important that such innovations are tested with passengers, including the more vulnerable, to ensure that they bring the improvements which passengers' seek. We would be happy to work with DfT to explore this issue further.

14. It is important that the full range of potential technologies, including mobile phone ticketing and e-ticketing, is considered, rather than smartcards only. As noted in the consultation, "*A 'wave and pay' contactless bankcard payment method has been introduced by some retailers and Transport for London are planning to introduce it for ticketing on their network in future*".

15. We would add to the list of "*risks and issues*" listed at paragraph 67 of the consultation the need to ensure that fares and schemes as a whole continue to meet the needs of elderly and vulnerable passengers. New technology must not leave passengers behind or exacerbate inequalities.

16. The overall price of season tickets, particularly relative to household incomes, is a key issue. Season tickets account for a high proportion of the income of many commuter households. Median gross full-time annual earnings in the South East of England are around £28,000 p.a.<sup>4</sup>. Many rail season tickets in this region are priced at around one tenth of these gross income levels or more<sup>5</sup>.

#### *Chapter 3 - Using fares to achieve more efficient use of rail capacity*

17. We agree with the general principle that introducing new fares may have the potential, alongside other levers such as passenger information (see below), to help the railway operate more efficiently by encouraging some passengers to change their travel patterns.

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<sup>4</sup> See ONS, *2011 Annual Survey of Hours and Earnings*, Regional Earnings.

<sup>5</sup> On 12 June 2012 we looked at the price of a very small sample of season tickets into London for distances of around 20 miles outside central London. We looked at prices from five relatively large commuter towns that were reasonably widely geographically dispersed around the M25 (Brentwood, Dartford, Reigate, St Albans, Slough). The price of an annual season ticket to London zones 1-6 ranged from £2,748 to £3,752, with a simple average of about £3,130.

18. In the context of the way that we regulate Network Rail, capacity<sup>6</sup> charging reflects the importance that track access charges encourage train operators to make decisions that better reflect the costs associated with their use of track capacity. There may similarly be benefits to be had from permitting operators to structure their fares so as to influence passenger behaviour. The more that prices through the value chain reflect the underlying costs of provision, the better, subject to other economic and social policy considerations. Giving TOCs greater flexibility in fare setting, properly controlled, could make an important contribution in this area.

19. The main risk/issue is that new commuter fares aimed at spreading peak demand could compromise other key objectives of fares regulation, notably protecting passengers against market power and taking account of fairness and affordability.

20. The consultation document asks how government, *“could [...] ensure that any new commuter fares structure was as fair as possible?”*. One relatively simple way for DfT to ensure fairness (and also other the pursuit of other objectives such as affordability) would be to retain some form of restriction on either the absolute level of, or permitted annual increases to, individual fares. Such restrictions would of course, require a judgement by government on what constituted a *“fair”* level of pricing, something that it has hitherto not been explicitly required to make, and which could potentially introduce further distortions and/or inconsistencies. As such this may not be an attractive proposition.

21. Given this potential conflict between using fares to manage demand and other objectives of fares regulation, we think that government should give careful consideration to, in addition to fares, any other levers that could be used to manage demand. Improved passenger information is an important example of this.

22. ORR has recently worked with South West Trains (SWT) to test whether increasing the prominence of publicly available crowding information would have an impact on passenger behaviour. Posters containing crowding information (using a simple ‘traffic light’ colour scheme to indicate whether particular trains typically had seats available, standing room available, or only limited standing room available) were put up at five SWT stations between November 2011 and February 2012.

23. We wanted to get passengers’ views on whether they had seen the information and if it had any impact on the train they catch and we therefore handed out questionnaires to ask passengers directly at all five stations. Our analysis of the questionnaire data showed that:

- around one third of respondents had seen the information;

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<sup>6</sup> See <http://www.rail-reg.gov.uk/server/show/ConWebDoc.10907>.



- over two thirds of respondents who saw the information found it to be at least fairly useful;
- just over one fifth of respondents who saw the information regularly or occasionally changed the trains that they catch as a result of seeing the information; and
- just under two thirds of respondents who had not seen the information said that, if they had seen it, they would have considered changing their travel patterns.

24. We are currently analysing SWT loading data (around a third of SWT's fleet has been fitted with data loading equipment that is able to count the number of passengers on-board) to explore whether we can measure the impact that the crowding information had on actual numbers travelling on certain trains.

25. Given the potentially profound impact on passengers of any significant increase in the use of demand management techniques, we would strongly support the use of relatively small-scale trials to test the full effects of change and in due course support the required impact assessments.

#### *Chapter 4 - Fares and ticketing complexities*

26. Fares data should be an important strand of the industry's movement towards the wider availability of information. There is a potentially important role for third parties to play. We hope that wider access to data would allow private sector companies to develop innovative approaches to delivering rail fares information in a way that was helpful to passengers. Such approaches might help to address some of the information problems highlighted in our complexity report (see below).

27. Where information services do not meet passengers' requirements with wider access to data we would hope that such issues would be self-correcting as passengers gravitated towards the most accurate services. Where, for example, inaccurate or misleading information led passengers to make wrong decisions, consumer law could be used to protect passengers' interests, by requiring changes to passenger information itself or to the way in which it is provided.

28. On the wider issue of fares and ticketing complexity, in June 2012 we published a report, *Fares and ticketing – information and complexity* ('complexity report')<sup>7</sup>. Key conclusions of the complexity report included the following:

- It is important that passengers have the information they need to make informed decisions when buying train tickets. This is because it enables them to choose the

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<sup>7</sup> See <http://www.rail-reg.gov.uk/server/show/ConWebDoc.10937>.

right ticket and get the best deal for their journey and to make the most of their ticket.

- Where passengers do not have the information they need, they can end up paying more than is necessary or find themselves being penalised for having the wrong ticket. Lack of clarity or certainty that they are getting the right ticket can also undermine their confidence and trust in the railways and their willingness to travel by rail.

29. The report highlighted a number of areas where passengers have problems understanding or accessing information about the tickets they are buying. These include problems understanding the restrictions and validities attached to tickets, particularly in relation to Off-peak and Advance tickets, and when buying tickets at ticket vending machines (TVMs).

30. We are currently working with ATOC, individual train companies, and passenger bodies to help us understand the extent to which initiatives that ATOC and train companies have put in place will address the problems we identified. We are hopeful that these initiatives will deliver improvements for passengers but remain open to the possibility of taking action to enforce consumer law if we find evidence that individual train companies are failing passengers with regard to the information they provide.

#### *Chapter 5 - Buying tickets*

31. As set out in the cover letter to this response, there are currently a number of wider issues to consider in ticket retailing. Our view is that a wider role for ORR in retail could generate significant benefits. The ticket office debate is a matter for DfT but we have some observations stemming from the knowledge and understanding that we have acquired as a result of our various work with passengers.

32. The main potential gains from reduced ticket opening hours would be on the cost side. Negative impacts would largely be borne by passengers, primarily those who buy tickets from stations, but also those passengers who value the presence of station employees from a security perspective. Previous research carried out by London TravelWatch has shown that station environment (including factors such as the presence of litter and/or graffiti) can make significant differences to passenger perceptions of security and safety.<sup>8</sup>

33. Our complexity report outlines some of the shortcomings of a reliance on TVMs rather than ticket office staff. The information provided at TVMs tends to be less than the detailed information that can be sought from and provided by staff at ticket offices or other channels such as websites.

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<sup>8</sup> See, for example, *Standards at London's Rail Stations*, September 2010, [www.londontravelwatch.org.uk](http://www.londontravelwatch.org.uk).

34. In a 2010 report<sup>9</sup> on TVMs , Passenger Focus found that:

“one of the key barriers to using TVMs was one of confidence. Even some passengers who were used to buying tickets through a TVM experienced difficulty when asked to find the correct ticket for an unfamiliar journey, especially when this was complex or expensive. The main cause of this confusion was linked to questions over the validity of ticket types and the restrictions that apply. Unlike buying tickets from staff or online, TVMs were often unable to provide the precise information or reassurance needed by the passenger. This potentially results in passengers buying the more expensive ticket, utilising a ‘better safe than sorry’ mentality, or taking a chance on the cheaper ticket and ‘hoping for the best’.”

35. Passenger Focus has previously highlighted a number of issues with TVMs including screen layout, programme sequence, and information.

36. Train companies have told us that TVMs are best suited to the buying of tickets for the most simple or common journeys. For example, train companies told us that:

- “TVMs are best suited to selling a limited range of frequently bought tickets, most of which are bought by customers who a) know what they want and b) are familiar with the railway environment.” and
- “the primary purpose of the TVM is to allow customers to collect pre-paid tickets and to provide additional retail capacity for those purchasing walk up tickets for immediate travel.”

37. Many of these issues were borne out by our own study, which found that TVMs are a reasonable means of buying tickets where passengers have a good idea of their requirements in advance. Issues can arise where machines require a degree of prior knowledge and/or a good understanding of fares structures and ticket terminology.

38. Which? has also found TVMs to be confusing and unclear. The Command Paper on reforming the railways recognises the need for, *“a more user-friendly ticketing system that communicates fares information to passengers in a straightforward way, so that they can confidently select the most appropriate fare for their journey.”*

39. The above suggests that alternatives to current ticket office opening hours should, as far as possible, compensate passengers for the loss of the perceived benefits of ticket offices over and above those provided by TVMs, primarily around security and the availability of information. The preservation of these benefits, rather than the preservation of ticket office opening hours *per se*, is the key issue.

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<sup>9</sup> See *Ticket Vending Machine Usability Qualitative Research*, [www.passengerfocus.org.uk](http://www.passengerfocus.org.uk).